

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CHARLES L. PHILLIPS,

Plaintiff

PEARSON'S PAINTING, INC.,

Defendant

Case No. 13-211

**COMPLAINT AND REQUEST
FOR JURY TRIAL**

COMES NOW the Plaintiff and for his cause of action against the Defendant, alleges and states as follows:

1. The Plaintiff is a citizen and resident of Valley, Douglas County, Nebraska.
2. The Defendant Pearson's Painting, Inc. ("Pearson's Painting") is a Nebraska corporation which at all material times has maintained its principal place of business in Washington County, Nebraska.
3. At all times material hereto the Defendant has been an employer of the Plaintiff within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 48-1228 *et seq.*
4. At all times material hereto the Plaintiff has been an employee of the Defendant within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 48-1228 *et seq.*

FIRST CLAIM FOR RELIEF

5. This action arises out of the Plaintiff's claim for overtime compensation pursuant to 29 U.S.C. § 207 and 216. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216, for redress of violations of the Fair Labor Standards Act.
6. In or around June of 2005, the Plaintiff was hired by the Defendant as a foreman for Defendant's painting operations. Plaintiff's had an hourly wage throughout his employment, starting at \$18.00 per hour.
7. Plaintiff's employment with the Defendant ended in approximately May of 2013. His ending hourly wage was \$24 per hour.
8. The position held by the Plaintiff was covered by the maximum hours provision of the Fair Labor Standards Act, 29 U.S.C. § 207. From the time he began employment with the Defendant until approximately May of 2013, the Plaintiff was regularly required to work overtime hours on a weekly basis.
9. During the time he was employed by the Defendant, the Plaintiff was not paid for all hours worked in excess of 40 hours per week or at the overtime rate.
10. The failure of the Defendant to pay Plaintiff for overtime hours at the overtime rate is a violation of 29 U.S.C. § 207, for which the Defendant is liable to the Plaintiff in the amount of one and one-half times the Plaintiff's normal hourly rate for all hours worked by the Plaintiff each week in excess of 40 hours, plus an equal amount as liquidated damages.

11. The failure of the Defendant to pay the Plaintiff the overtime compensation owed to the Plaintiff was willful within the meaning of 29 U.S.C. § 255, entitling the Plaintiff to liquidated damages.
12. Pursuant to the provisions of 29 U.S.C. § 216(b) the Plaintiff is entitled to a reasonable fee for the services of his attorney in this action.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, for all unpaid overtime compensation due in an amount to be proved at trial, for liquidated damages, pre-judgment interest, the costs and expenses of this action, a reasonable attorney's fee, and additional relief the Court considers appropriate.

SECOND CLAIM FOR RELIEF

13. The Plaintiff reasserts as if fully set forth herein all of the allegations of paragraphs 1-11, above.
14. The court has jurisdiction of this claim pursuant to the supplemental jurisdiction of the Court, 28 U.S.C. § 1367(a).
15. For the period of time he was employed by the Defendant, the Plaintiff was entitled to an agreed upon hourly wage for the hours that he worked for Defendant. Upon his termination, the Plaintiff was not paid the set hourly wage for all hours worked.
16. The wages owed to Plaintiff constitute wages within the meaning of the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 48-1228 *et seq.* The Plaintiff satisfied all conditions to earn the wages and Defendant is liable to pay such wages.

17. The Defendant's failure to pay the Plaintiff the wages owed to him was willful, and this Court should enter an Order requiring the Defendant to pay twice the value of such benefit to the common school fund of the State of Nebraska, pursuant to the Neb. Rev. Stat. § 48-1232.
18. It has been necessary for the Plaintiff to utilize the services of counsel to prosecute this claim. Therefore the Plaintiff is entitled to an attorney's fee of at least 25% of the wages recovered pursuant to Neb. Rev. Stat. § 48-1231.

WHEREFORE, Plaintiff prays for judgment against the Defendant for the unpaid wages, for attorney's fees, costs, prejudgment interest, and an order requiring the Defendant to pay to the common school fund of Nebraska, and for such other relief as is appropriate.

PLACE OF TRIAL AND JURY DEMAND

Plaintiff designates Omaha, Nebraska as the place of trial, and hereby demands a jury trial.

DUTY TO PRESERVE EVIDENCE

Plaintiff herein demands that Defendant maintain and not destroy or alter in any way all records, including, but not limited to, work schedules, time sheets, paystubs, payroll records, and other records, including bank records for accounts used to pay employees, which relate in any manner to this litigation. Further, Plaintiff demands that all computers and computer equipment (personal and/or business), mobile devices, notebooks, iPads, stored electronic data, including but not limited to, hard drives, CDs, DVDs, diskettes, memory devices, scanners and printers which contain any information

whatsoever relating to this matter be stored in a secure and safe location and not modified or altered in any manner.

Dated this 10th day of July, 2013,

CHARLES L. PHILLIPS, Plaintiff,

By: /s/ Todd A. West
Todd A. West, #24261
of Law Office of Todd West
P.O. Box 4703
Omaha, NE 68104
Phone: (402) 614-0185
Email: toddwestlaw@gmail.com